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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2010 - 208

11 **SUE ELLEN CUNNINGHAM**
12 **665 Stonemag Way**
13 **San Jose, CA 95127**

A C C U S A T I O N

14 **Registered Nurse License No. RN 289630**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about April 30, 1978, the Board of Registered Nursing issued Registered Nurse
22 License Number RN 289630 to Sue Ellen Cunningham (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on March 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section **2750** of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section **2764** of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
8 Code, the Board may renew an expired license at any time within eight years after the expiration.

9 **STATUTORY AND REGULATORY PROVISIONS**

10 6. Section **2761** of the Code states, in pertinent part:

11 The board may take disciplinary action against a certified or licensed nurse or deny an
12 application for a certificate or license for any of the following:

13 (a) Unprofessional conduct, which includes, but is not limited to, the following:

14 (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
15 functions.

16 ...

17 7. California Code of Regulations, title 16, section **1442**, states:

18 As used in Section 2761 of the code, "gross negligence" includes an extreme departure
19 from the standard of care which, under similar circumstances, would have ordinarily been
20 exercised by a competent registered nurse. Such an extreme departure means the repeated failure
21 to provide nursing care as required or failure to provide care or to exercise ordinary precaution in
22 a single situation which the nurse knew, or should have known, could have jeopardized the
23 client's health or life.

24 8. California Code of Regulations, title 16, section **1443**, states:

25 As used in Section 2761 of the code, "incompetence" means the lack of possession of or the
26 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
27 exercised by a competent registered nurse as described in Section 1443.5.

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9. California Code of Regulations, title 16, section 1443.5 states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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2 **FACTUAL SUMMARY**

3 11. On or about August 13, 2006, Respondent was employed as a registered nurse at
4 Good Samaritan Hospital in San Jose, California. Respondent was assigned to provide nursing
5 care to Patient 1.¹

6 12. While Respondent was on duty, Patient 1 complained of pain and discomfort related
7 to an IV tube that had previously been placed in Patient 1's right wrist. Respondent failed to
8 adequately address the issue by inspecting the insertion site and failed to take appropriate
9 measures to insure that the tube had been properly inserted.

10 13. While Respondent was on duty, Patient 1 was administered Dilaudid and Phenergan
11 via the IV line in his right wrist. Respondent failed to properly address Patient 1's subsequent
12 complaints of pain and burning to his wrist and hand. Respondent failed to relate Patient 1's
13 symptoms to a physician or to another nurse for consultation. Respondent also failed to recognize
14 that Patient 1 was suffering an adverse reaction in the form of vasospasm, and failed to implement
15 nursing intervention.

16 14. Respondent failed to timely and adequately chart the condition of Patient 1's right
17 hand and failed to complete timely and thorough assessments of Patient 1's right hand.
18 Respondent failed to chart significant events including, but not limited to, the fact that at some
19 point Patient 1 removed the IV line himself.

20 15. The IV line in Patient 1's right wrist was subsequently discovered to have been
21 improperly inserted. Due to the resulting loss of circulation to his fingers over time, Patient 1 was
22 required to have three fingers amputated.

23 **FIRST CAUSE FOR DISCIPLINE**

24 (Gross Negligence/Incompetence)

25 16. Respondent is subject to disciplinary action under section 2761(a)(1) in that she acted
26 with incompetence and gross negligence in carrying out usual certified or licensed nursing

27 _____
28 ¹ The name of Patient 1 is withheld in this document in order to protect privacy.

1 functions, as set forth above in paragraphs 11 through 15.

2 **SECOND CAUSE FOR DISCIPLINE**

3 (Unprofessional Conduct)

4 17. Respondent is subject to disciplinary action under section 2761(a) in that she acted
5 unprofessionally, as set forth above in paragraphs 11 through 15.

6 **PRAYER**


7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse License Number RN 289630, issued to Sue
10 Ellen Cunningham;

11 2. Ordering Sue Ellen Cunningham to pay the Board of Registered Nursing the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 125.3;

14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: 10/14/09

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17 LOUISE R. BAILEY, M.ED., RN
18 Interim Executive Officer
19 Board of Registered Nursing
20 Department of Consumer Affairs
21 State of California
22 Complainant
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